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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA,

Petitioner,

v.

JOSEPH P. RYAN,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR RESPONDENT IN OPPOSITION

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Statement

After the printing of our brief in opposition had been completed and on the very day on which we intended to serve and file it, we were served by the Solicitor General with a copy of the opinion of Hon. Edward J. Devitt, of the United States District Court, District of Minnesota, Fourth Division, in the case of *United States* v. *Brennan, et al.*, together with a copy of a covering letter to the Clerk of this Court requesting that copies of Judge Devitt's opinion be submitted to the Court.

Although there is nothing in that opinion which was not fully presented to the Court of Appeals for the Second Circuit in the instant case, there are two points treated by Judge Devitt which, while vigorously urged by the Government below, were either not mentioned or not pressed in the petition herein and hence were not dealt with in our brief. Since Judge Devitt's opinion has now been submitted to this Court, we deem it appropriate to file this supplemental brief dealing solely with those two matters.

POINT I

Section 1 of the National Labor Relations Act (29 U. S. C., Section 151) has no application either to Section 302 of the Taft-Hartley Act or to the issue at bar.

Judge Devitt relied heavily upon a portion of Section 1 of the NLRA, quoted on page 4 of his opinion, as indicative of Congressional intent toward Section 302 and as support for the construction of that section urged by the Government. The paragraph quoted by him, which was added to the National Labor Relations Act in 1947 through the enactment of the Taft-Hartley Law, is irrelevant to the scope of Section 302, and the reliance put upon it is wholly misplaced.

In the first place the findings and policy statement in Section 151 of 29 U. S. C. have no application whatsoever to Section 186 of the Code, which is Section 302 of the Taft-Hartley Law. For Section 151 of the Code is Section 1 of that portion of the Taft-Hartley Law encom-

passed within the National Labor Relations Act. The findings and policy statements in that section refer only to the NLRA which concludes with Section 168 of the Code and have no reference to any other portion of the Taft-Hartley Act. Judge Devitt apparently overlooked the fact that Section 302 is outside the NLRA, although by virtue of Section 501 of the Taft-Hartley Law the meaning of the word "representative" in Section 302 is to be gathered from its meaning in the NLRA.

In brief, therefore, the provisions of Section 151 of the Code are material only insofar as they use the term "representative," and here, as in all other provisions of the statute, the use of that term supports the construction contended for by us, not by petitioner. But Section 151 is wholly immaterial insofar as it generalizes on the matter to be covered in the statute and the objects to be accomplished therein, since the statute thus contemplated is the NLRA alone, not the remainder of the Taft-Hartley Law.

That this section of findings and policies is limited in scope to the NLRA appears further from the fact that the Taft-Hartley Law as a whole does have a general section entitled "Statement of Policy", which covers the entire Act, NLRA and non-NLRA provisions alike. This provision, Section 1 of the Taft-Hartley Law and Section 141 of the Code, consists of two short paragraphs, and is so general in its content as to shed absolutely no light on the meaning of "representative" as used either in Section 302 or in any other part of the Taft-Hartley Law.

Moreover, the quoted paragraph of Section 1 of the NLRA was drawn with specific provisions in mind which do not include Section 302. The reference therein to the elimination of "certain practices by some labor organizations, their officers and members" deals with the various

provisions in Section 8(b) of the amended NLRA (Section 158(b) of the Code) which prohibits "unfair labor practices [by a] . . . labor organization or its agents". The addition of Section 8(b), representing the new concept of union unfair labor practices, was the principal change made in the NLRA in 1947, and the new fourth paragraph in Section 1 of the NLRA (Section 151 of the Code) was intended to explain that addition. It has no relation to any provision of the Taft-Hartley Law outside of the NLRA, and certainly not to Section 302 of the Taft-Hartley Law.

POINT II

The characterization in the report of the Joint Conference Committee of the changes made in Section 302 by that Committee does not support petitioner's argument herein.

Judge Devitt also relied heavily, as did District Judge Palmieri in the instant case, upon the report of the Joint Conference Committee for the Taft-Hartley bill which stated that the Senate amendment was being adopted "with minor clarifying changes."

Although we do not believe that legislative purpose can properly be gleaned from a committee report's characterization of the magnitude or importance of a textual change, as distinct from a statement as to the substance or meaning of the action taken, in this instance we agree that the change made was indeed minor viewed in relation to the general scheme and purpose of Section 302; the fact that these changes are crucial to this particular

case is no evidence to the contrary.[1] As the Court of Appeals said in the instant case (18a, footnote 10a):

> "For, in relation to the general purpose of the Section—the regulation of union welfare funds—the changes are of little import, and only if the Section is applied to other kinds of payments do they assume importance."

To illustrate the error in Judge Devitt's analysis, it is necessary only to turn to paragraph (g) of Section 302. This paragraph was added for the first time by the Joint Conference Committee and substantially enlarges the rights of employee representatives by restricting the applicability of the statute. It too is covered by the phrase in the Committee report "minor clarifying changes", and again this is accurate viewing the section as a whole. Nevertheless, in the case of a trust fund which comes within this paragraph, the addition thereof by the Joint Conference Committee makes the difference between lawful conduct and the commission of a crime; to the parties involved, this "minor" change means that they cannot be imprisoned for acts which would otherwise have left them clearly liable to just that fate. So too with the change in the meaning of "representative" as it affects the case at bar.

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[1] To hold in effect that the elimination of the separate definition of representative made no substantive change in Section 302 is to ignore not only the comparative language of the bill and the statute, but the express words of Section 302's sponsor. For it should be recalled that Senator Ball in introducing this section announced to the Senate that the meaning of the word "representative" in his proposal was different from that in the NLRA. Under Section 501(3) of the Act, of course, the meanings are the same.

CONCLUSION

For the foregoing reasons and for those set forth in our principal brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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